

## ADVISORY OPINION # 18-13

### **QUESTION:**

A member of the legislature requests guidance relating to part time employment as a police officer with the Port Dickinson Police Department. (Broome County)

### **FACTS:**

Prior to the member's legislative service, he served as a law enforcement officer for fifteen years. He served two years as a deputy sheriff with the Chenango County Sheriff's Office followed by thirteen years with the Broome County Sheriff's Office. When he ran for office, he held the appointed rank of Broome County Undersheriff. The legislator has now been offered a position as a part-time police officer in the Village of Port Dickinson that would require no more than twenty-four hours per month at the rate of sixteen dollars an hour. The part time employment would allow the member to retain his training certification as a police officer. The duties of police officer in the Village of Port Dickinson include routine patrol work, assisting in the investigation of criminal offenses, traffic control and dealing with juvenile issues. This work would also require the member to assist the Chief of Police with administrative duties such as evidence room audits and warrant reviews. Ordinarily, a police officer works under the supervision or the direction of a higher ranking officer. However, there is considerable independent responsibility for the exercise of sound independent judgment in emergencies. The member states that he would not use any State resources nor would he conduct any duties related to his outside employment in State offices.

### **RELEVANT STATUTE(S):**

Public Officers Law §§ 73-a; 74 (2) and (3)

### **DISCUSSION:**

Public Officers Law § 74 (2) first sets out the rule with respect to conflicts of interest for members of the legislature. It provides, in relevant part:

*"No . . . member of the legislature . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest."*

The Commission has observed that the general rule in §74 (2) is intended to guard against substantial conflicts of interest between a member of the legislature's outside activities and his or her official duties. It is not intended to prohibit citizen legislators from having outside interests that result in financial gain, but to prohibit financial or other gain at the expense of the public trust. Here, the outside employment is with a local police force on a part time basis doing work similar to positions he has held previously. Based upon the facts presented, this outside employment does not present a conflict of interest.

If a member's official act will affect his or her outside interest, the test applied is whether any impact on that outside interest resulting from his or her sponsorship or voting on state legislation

or resolutions, is similar to that realized by other members of the business, profession, industry, occupation, or group affected.

Here, the facts as presented do not indicate that the member's outside employment poses a conflict of interest with his legislative duties, nor do they evidence that he will receive financial or other gain of a kind that § 74 (2) prohibits. On this basis, the Commission has determined that the member's outside employment is not in substantial conflict with his legislative duties. However, in the event that legislation or a resolution should come before the member that affects his position or the Port Dickinson Police Department, he is advised to seek additional counsel.

Public Officers Law § 74 (3) next outlines the code of ethics standards for members of the legislature. As relevant here:

- "a. No . . . member of the legislature . . . should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties [;]"*
- "b. No . . . member of the legislature . . . should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority [;]"*
- "c. No . . . member of the legislature . . . should disclose confidential information acquired by him in the course of his or her official duties nor use such information to further his or her personal interests [;]"*
- "d. No . . . member of the legislature . . . should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated nongovernmental purposes."*

On the forgoing facts, the member's outside employment does not improperly conflict with Public Officers Law § 74 (3). Even so, as with any outside engagement, the member must keep all of his work activities, including solicitation of clients separate and distinct from his legislative activities and resources.

Finally, the Commission reminds the member that, pursuant to Public Officers Law § 73-a, he must properly report the information pertaining to his outside employment, including income and reimbursed expenses in excess of \$1,000 annually, on his Annual Statement of Financial Disclosure.

#### **CONCLUSION:**

Based on the foregoing facts, the Commission concludes that the member's outside employment as a part time police officer does not violate Public Officers Law §§ 73 or 74 provided he complies with the guidance above. In addition, he must properly report his outside employment and income received on his Annual Statement of Financial Disclosure where required by Public

Officers Law § 73-a. Should any aspect of the member's employment change, the Commission advises the member to seek additional guidance.

**ADVISORY OPINION**  
**# 18-21**

**QUESTION:**

A member of the legislature requests guidance on part-time outside employment as a self-employed, private investigator. He asks whether this outside occupation is compliant with Public Officers Law.

**FACTS:**

Prior to the member's service in the Senate, he served as a Law Enforcement Officer for 15 years. He is currently employed, outside his legislative position, as a part time police officer. (Advisory Opinion #18-13) He plans to apply for a license to operate as a private investigator pending results from the required Department of State examination, which he took on December 3<sup>rd</sup>. As a private investigator, the member would be hired to obtain information regarding the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any person or group of persons. He could also conduct investigations regarding the credibility of witnesses; the whereabouts of missing persons; the location or recovery of lost or stolen property, and the causes and origin of fires, libels or losses. The member anticipates working no more than 30 hours per month with an estimated rate of \$75.00 per hour, as commensurate with others in the profession in the Southern Tier.

**RELEVANT STATUTE(S):**

Public Officers Law §74 (2) and (3); §73(4)(a) and §73-a

**DISCUSSION:**

Public Officers Law § 74 (2) first sets out the rule with respect to conflicts of interest for members of the legislature. It provides that:

*"No . . . member of the legislature . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest."*

The Commission has observed that the general rule in §74 (2) is intended to guard against substantial conflicts of interest between a member of the legislature's outside activities and his or her official duties. It is not intended to prohibit citizen legislators from having outside interests that result in financial gain, but to prohibit financial or other gain at the expense of the public trust. Here, the outside employment is focused on private investigation and surveillance type work. The potential employment does not, based upon the facts presented, evidence a substantial conflict of interest with his legislative position.

If a member's official act will affect his or her outside interest, the test applied is whether any impact on that outside interest resulting from his or her sponsorship or voting on state legislation or resolutions, is similar to that realized by other members of the business, profession, industry, occupation, or group affected.

Here, the facts as presented do not indicate that the member's outside employment poses a conflict of interest with his legislative duties, nor do they evidence that he will receive financial or other gain of a kind that § 74 (2) prohibits. On this basis, the Commission has determined that the member's outside employment is not in substantial conflict with his legislative duties.

Public Officers Law § 74 (3) next outlines the code of ethics standards for members of the legislature. As relevant here:

- "a. No . . . member of the legislature . . . should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties [;]*
- "b. No . . . member of the legislature . . . should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority [;]*
- "c. No . . . member of the legislature . . . should disclose confidential information acquired by him in the course of his or her official duties nor use such information to further his or her personal interests [;]*
- "d. No . . . member of the legislature . . . should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated nongovernmental purposes."*
- "f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.*
- "h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.*

On the forgoing facts, the member's outside employment does not improperly conflict with Public Officers Law § 74 (3). Even so, as with any outside engagement, the member must keep all of his work activities, including solicitation of clients, separate and distinct from his legislative activities and resources. In addition, the member is reminded that he may not use his legislative title in his private business.

The member is also reminded of the restrictions on selling goods or services to the State of New York.

Public Officers Law §73(4)(a) provides, in relevant part:

*No... member of the legislature,...or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.*

Finally, the Commission reminds the member that, pursuant to Public Officers Law § 73-a, he must properly report the information pertaining to his outside employment, including income and reimbursed expenses in excess of \$1,000 annually, on his Annual Statement of Financial Disclosure.

**CONCLUSION:**

Based on the foregoing facts, the Commission concludes that the member's outside employment as a part-time, self-employed private investigator does not violate Public Officers Law §§ 73 or 74 provided he complies with the guidance above. In addition, the legislator must properly report his outside employment and income received on his Annual Statement of Financial Disclosure where required by Public Officers Law § 73-a. Should any aspect of the member's employment change, the Commission advises the member to seek additional guidance.